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EXAMINER

BEISNER, WILLIAM H

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,193

Applicant(s)

GITT, BRIAN

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10, 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 2, 11-13, 17, 18, 23-28 and 30 is/are rejected.
- 7) ☒ Claim(s) 14-16, 22, 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements filed 06 Dec. 2001 and 21 Jan. 2003 have been considered and made of record.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Lomas et al.(GB 2 290 936).

With respect to claim 25, the reference of Lomas et al. discloses a composting system that includes a shipping container (10) and a composting system (3-8) within the shipping container.

With respect to claim 30, the composting system is a vermicomposting apparatus.

4. Claims 11-13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Storie (US 482,511).

With respect to claim 11, the reference of Storie discloses a container (1) capable of holding compost. The container includes a plurality of side regions (2-4) and a bottom region (6)

Art Unit: 1744

that includes a plurality of apertures. The container includes a grid (7) above the bottom of the container and is adapted to agitate the material in the container.

With respect to claims 12 and 13, the grid member (7) includes a “u” shaped handle (9) that passes through an opening in the sidewall of the container.

With respect to claim 17, the container includes a finger grip (6).

5. Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka (JP 11-100288).

With respect to claim 25, the reference of Tanaka discloses a composting system that includes a shipping container (43) and a composting system (2 and 3) inside the shipping container.

With respect to claim 26, the composting system includes a shredder (3).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Storie (US 482,511).

The reference of Storie has been discussed above.

The above claim differs by reciting that the container is made of a rigid plastic.

While the reference of Storie is silent as to the material of construction of the container, it would have been obvious to one of ordinary skill in the art to determine the optimum material of construction. The use of plastics is a desirable material because it is inexpensive in terms of manufacture and is resistance to rust.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka (JP 11-100288).

The reference of Tanaka has been discussed above.

While the reference of Tanaka discloses the use of a shipping container mounted on a truck, the reference is silent as to the dimensions of the container. However, based merely on the desired amount of material to be contained and composted by the system, it would have been obvious to one of ordinary skill in the art to determine the optimum length of the container while allowing it to be mounted on a truck.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka (JP 11-100288) in view of Wirth (US 5,377,921).

The reference of Tanaka has been discussed above.

The reference of Tanaka is silent as to the use of an insulated container.

The reference of Wirth discloses that it is conventional in the art to employ an insulated housing for a composting system (See column 3, lines 3-9).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of the primary reference with insulation for the known and expected result of utilizing the process heat resulting from the composting process.

With respect to climate control, it would have been obvious to one of ordinary skill in the art to provide the container with a climate control system for the known and expected result of optimizing the composting conditions within the composting system.

12. Claims 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLillo (US 5,441,552) in view of Redpath (US 3,438,677).

The reference of DeLillo discloses that it is known in the art to transfer material to be composted within a transfer container in the form of a dump truck (See Figure 9). The material to be composted is dispensed by tilting the container of the truck.

Claim 21 differs by reciting that the container is vibrated while the material is dispensed.

The reference of Redpath discloses that it is known in the art to provide a dump truck box with a vibrating device so as to aid in removal of the material from the box (See column 1, lines 34-62).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the box of the transfer device of the primary reference with a vibrating device for the known and expected result of providing a means recognized in the art for aiding the removal of material from the transfer container while in a tilted position.

With respect to claim 23, the box of a dump truck includes a passage covered by a flap.

With respect to claim 24, whether the material provided in the transfer container is shredded prior to transfer or after transfer would have been merely an obvious matter in design choice based on considerations such as with respect to the location of the shredding device.

Allowable Subject Matter

13. Claims 1-10, 19 and 20 are allowed.

Art Unit: 1744

14. Claims 14-16, 22 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is a statement of reasons for the indication of allowable subject matter:

Claims 1-7 are allowable because while the prior art of record discloses a composting system that includes a plurality of tray devices with apertured bottoms, the prior art of record fails to teach or fairly suggest a housing that includes a plurality of drawers with apertured bottoms and wherein each drawer includes its own receiving structure beneath the bottom of the drawer.

With respect to claims 8-10, 19 and 20, while the prior art of record discloses a composting system that includes a plurality of tray devices with apertured bottoms wherein the material is composted in the trays and the trays can be stacked, the prior art of record fails to teach or fairly suggest agitating tray or drawer containers so as to dispense the composted material through the apertured bottom of the containers.

With respect to claim 14, while the prior art of record discloses a container structure that includes an apertured bottom and an agitating grid above the bottom, the prior art of record fails to teach or fairly suggest providing this container structure as a plurality of drawers in a composting apparatus.

With respect to claims 15 and 16, while the prior art of record discloses a container structure that includes an apertured bottom and an agitating grid above the bottom, the prior art